

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Carrier Current Systems, including Broadband over)	
the Power Line Systems)	ET Docket No. 03-104
)	
Amendment of Part 15 regarding new requirements)	
and Measurement Guidelines for Access Broadband)	
over Power Line Systems)	ET Docket No. 04-37

To: THE COMMISSION...

**MOTION FOR LEAVE TO FILE MOTION TO DISMISS AND MOTION TO DISMISS
NOTICE OF PROPOSED RULEMAKING FOR WANT OF SUPPLEMENTAL JURISDICTION**

COMES NOW the Movant, JAMES EDWIN WHEDBEE, and pursuant to Section 1.405(c) of the Commission's rules and regulations [47 C.F.R. Section 1.405(c).], respectfully moves and requests that the Commission grant the Movant leave to move dismissal of the above-captioned proceedings; that the Commission dismiss the Notice of Proposed Rulemaking in the above-captioned proceedings for want of adequate jurisdiction; and, that the Commission grant any and all alternative relief consistent herewith. As good cause for this motion, the Movant states in support hereof as follows...

[1] Section 1.405(c) permits Motions to Dismiss to be filed with leave of the Commission.

[2] Movant most respectfully alleges that the Commission is without jurisdiction to initiate rulemaking proceedings regarding power generation organizations and the spectral purity of power delivered to customers by power generation organizations. [47 U.S.C. Sections 151, 152(a).] The Commission has regulatory power and jurisdiction over the transmission of energy by radio, not by wire. [47 U.S.C. Section 151, 152(a).] Insofar as the present proceedings implicate interference by power generation organizations using their power lines to communicate, the Commission's jurisdiction is further limited by 47 U.S.C. Section 151's admonition that the Commission serve "...the purpose of safety and life through the use of wire and radio communications." The present proposal by the Commission has not been proven to serve the aforementioned purpose, and substantial evidence exists to the contrary.

[3] Movant respectfully alleges that the Commission's above-captioned Notice of Proposed Rulemaking is an unlawful enlargement of Commission powers not foreseen or intended by Congress in its creation of the Commission. Congress authorized the Federal Energy Regulatory Commission and State Regulatory Authorities jurisdiction over "...the optimization of the efficiency of use of facilities and resources by electric utilities..." [16 U.S.C. Sections 2601, 2602, 2611(2), and 2627(b).] Because the Commission's present Notice of Proposed Rulemaking touches and concerns the uses to which electrical generation equipment and transmission lines are put, either Congress must confer upon the Commission the requisite jurisdiction, or the proposals suggested by the Commission must first be adopted by those agencies with the correct jurisdiction.

NOW THEREFORE, the foregoing considered, Movant, JAMES EDWIN WHEDBEE, respectfully requests that the Commission grant him leave to move dismissal of the Notice of Proposed Rulemaking in the above-captioned proceedings and, further, that the Commission dismiss said proceedings consistent with the aforementioned limits upon its jurisdiction, and for such other and further relief as shall be consistent herewith.

Respectfully Submitted:

/s/ James Edwin Whedbee
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May 8, 2004